



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG-2016-0395]

RIN 1625-AA08

Special Local Regulation; Ohio River Mile 791.0 to 795.0, Evansville, IN

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary special local regulation for all waters of the Ohio River, surface to bottom, extending from mile 791.0 to 795.0. This action is necessary to provide for the safety of life on these navigable waters near Evansville, IN, during the Evansville Freedom Festival Air Show. Entry of vessels or persons into this regulated area is prohibited unless specifically authorized by the Captain of the Port or a designated representative.

DATES: This rule is effective from 11:00 a.m., June 24, 2016 through 6:00 p.m., June 26, 2016. This rule will be enforced through actual notice.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2016-0395 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions about this rulemaking, call or email Petty Officer James Robinson, Sector Ohio Valley, U.S. Coast Guard; telephone 502-779-5347, email James.C.Robinson@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

On January 25, 2016, the Coast Guard published a notice of proposed rulemaking (NPRM) titled Sector Ohio Valley Annual and Recurring Special Local Regulations Update (81 FR 3976). That proposed rulemaking included expanding the date for this event and related special local regulation in the permanent list of recurring events under 33 CFR 100.801, Table 1, from 3 days to 4 days during the second or third weekend in June. There we stated why we issued the NPRM, and invited comments on our proposed regulatory action. The NPRM received no adverse comments and the comment period closed April 25, 2016. However, during the comment period for the NPRM, the sponsor of the Hadi Shrine/Evansville Freedom Festival Air Show informed us that the air show portion of the event would continue to take place for only 3 days, including a practice day. Therefore, there is no need to extend the effective period from 3 to 4 days for this event. However, for the 2016 occurrence the festival dates fall on the fourth weekend in June, so this temporary final rule is being issued for the 2016 occurrence only. It is impracticable to publish an NPRM at this time because this temporary final rule is necessary to establish the special local regulation for this year's occurrence beginning June 24, 2016.

We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the **Federal Register**. Delaying this rule to provide a full 30 days notice is unnecessary as this event is a recurring event

advertised to, and planned on, by the local community and waterway users that are familiar with this location on the Ohio River. Delaying this rule would also be contrary to public interest because immediate action is necessary for the safety of life during an air show taking place over this navigable waterway. Broadcast Notices to Mariners (BNM) and information sharing with the waterway users will update mariners of the restrictions, requirements and enforcement times during this event.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1233. The Captain of the Port Ohio Valley (COTP) has determined that potential hazards associated with the air show starting June 24, 2016 will be a safety concern for all waters of the Ohio River, surface to bottom, extending from mile 791.0 to 795.0. The purpose of this rule is to ensure safety of life on the navigable waters in the temporary regulated area before, during, and after the Evansville Freedom Festival Air Show.

IV. Discussion of the Rule

This rule establishes a special local regulation from June 24 through June 26, 2016. The special local regulation will cover all waters of the Ohio River, surface to bottom, extending from mile 791.0 to 795.0. Transit into and through this area is prohibited from 11:00 a.m. to 6:00 p.m. each day beginning June 24, 2016 through June 26, 2016. The duration of the special local regulation is intended to ensure the safety of vessels and these navigable waters before, during, and after the scheduled air show and fireworks displays. No vessel or person will be permitted to enter the special local regulation without obtaining permission from the COTP or a designated representative. Deviations request will be considered and reviewed on a case-by-case basis. The COTP Ohio Valley may be contacted by telephone at 1-800-253-7475 or can be reached by VHF-

FM channel 16. Public notifications will be made to the local maritime community prior to the event through the Local Notice to Mariners, and Broadcast Notice to Mariners.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the size, location, duration, and time-of-year of the special local regulation. The temporary special local regulation will only be in effect for approximately seven hours each day. The Coast Guard expects minimum adverse impact to mariners from the special local regulation’s activation as the event has been advertised to the public. Also, mariners may request authorization from the COTP Ohio Valley or the designated representatives to transit the special local regulations.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are

independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the special local regulation may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in

complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a special local regulation lasting less than seven hours a day that will prohibit entry on all waters of the Ohio River, surface to bottom, extending from mile 791.0 to 795.0. It is categorically excluded from further review under paragraph 34(h) of Figure 2-1 of the Commandant Instruction.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233

2. Add § 100.T08-0395 to read as follows:

§ 100.T08-0395 Special Local Regulation; Ohio River between mile 791.0 and 795.0, Evansville, IN.

- (a) Special local regulated area. The following area is a temporary special local regulation

for all waters of the Ohio River between mile 791.0 and mile 795.0, Evansville, IN, extending the entire width of the Ohio River.

(b) Enforcement. This special local regulation will be enforced from 11:00 a.m. until 6:00 p.m. each day beginning June 24, 2016 through June 26, 2016. For purposes of enforcement, actual notice will be provided.

(c) Special local regulations. (1) Persons or vessels desiring to enter into or passage through the regulated area must request permission from the COTP Ohio Valley or a designated representative. They may be contacted on VHF-FM radio channel 16 or phone at 1-800-253-7465.

(2) The Coast Guard will patrol the regulated area under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted via VHF-FM radio channel 16 or by phone at 502-587-8633.

(3) The Patrol Commander may terminate the event or the operation of any vessel at any time it is deemed necessary for the protection of life or property.

(d) Informational broadcasts. The COTP Ohio Valley or a designated representative will inform the public through broadcast notices to mariners of the enforcement period for the regulated area as well as any changes in the planned schedule.

Dated: May 26, 2016.

E. D. Denley,
Commander, U.S. Coast Guard,
Acting Captain of the Port Ohio Valley.

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